

Jennifer Drury Buzacky
414-274-3904
jbuzacky@whdlaw.com

November 15, 2002

Mr. Thomas C. Nash
Associate Regional Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590



Re: Chemical Recovery Systems ("CRS") Superfund Site in Elyria, Ohio
TechLaw Draft Allocation

Dear Tom:

This letter provides comments pertaining to TechLaw's draft CRS allocation and the volume assigned to Bucyrus-Erie Company (now known as Bucyrus International, Inc.) ("Bucyrus").

Based upon the information contained on the United States Environmental Protection Agency's ("U.S. EPA's") compact disc for the site, it appears that TechLaw has attributed to Bucyrus two site contacts -- a September 16, 1980 carboline zinc filler entry and a November 3, 1980 dirty solvent entry. See Table 1, 104(e) Responses/Conversion Information. The information concerning these contacts was obtained from both the CRS "Dirty Inventory" and Bucyrus' own Response to U.S. EPA's March 2, 2001 Request for Information ("Response").

Bucyrus is concerned, however, that the draft allocation does not appropriately characterize these contacts. First, Bucyrus' Response contains a November 3, 1980 bill of lading that notes 4,200 gallons of flammable liquid NOS that was consigned to CRS' Elyria, Ohio location. (See Exhibit B to Response.) A memo in Bucyrus' Response, however, indicates that the November 3, 1980 shipment of 4,200 gallons of solvent actually was delivered to the CRS Romulus, Michigan location. (See Exhibit E to Response.) Thus, the 4,200 gallons of dirty solvent attributed to Bucyrus should be removed from the TechLaw allocation, as its final destination was the Romulus, Michigan site and not Elyria, Ohio.

Second, the allocation attributes to Bucyrus 28,864 pounds of carboline zinc filler. (See Exhibit A to Bucyrus' Response). Although a September 16, 1980 bill of lading notes that the

MKE/805036.1

28,864 pounds carboline zinc filler was consigned to the CRS' Elyria, Ohio location, Bucyrus was actually paid \$2,886.40 for this material by N.S. Marketing, Inc. (September 29, 1980 and August 25, 1980 documents in Exhibit A). As you are likely aware, zinc filler was commonly added to paints. Thus, this product was a useful product, and not waste, and was inappropriately included on the TechLaw allocation report.

Although a September 29, 1980 document states that Bucyrus was disposing of its waste inventories, the documents in Bucyrus' Response, taken as a whole, distinguishes between "wastes" disposed of because they were no longer useful in and of themselves versus waste inventories sold to N.S. Marketing that were no longer useful solely because of Bucyrus' plant closing. Thus, the references to "disposal" and "waste" in association with the carboline zinc filler should not be interpreted as disposal of waste material, but as the sale of a useful product that was no longer useful to Bucyrus because of the closing of its plant.

Bucyrus is, thus, asking U.S. EPA (and/or TechLaw) to reevaluate the information contained in TechLaw's November, 2002 draft allocation to more accurately reflect Bucyrus' contacts with that site. Specifically, Bucyrus is asking that TechLaw remove the 4,200 gallons of solvent and 28,864 pounds of carboline zinc filler, leaving Bucyrus with no liability for the CRS site.

Thank you for your time and attention to this matter. If you have any further questions or need additional information, please contact me.

Very truly yours,



Jennifer Drury BuzECKy

JDB/sje

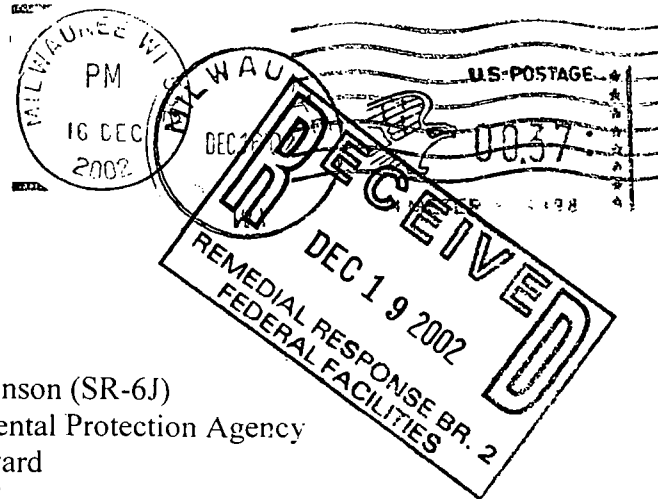
cc: Deena Sheppard-Johnson, SR-6J
Lynne M. Day



WHYTE
HIRSCHBOECK
DUDEK S.C.

111 EAST WISCONSIN AVENUE
SUITE 2100
MILWAUKEE, WI 53202-4894

Ms. Deena Sheppard-Johnson (SR-6J)
United States Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3507



60604+3507

